

REMARKS

Initially, the applicants acknowledge, with appreciation, the indication that claims 15-20 have been allowed. Claims 1-4 and 7-9 have been amended to improve form, claims 6 and 10-14 have been canceled without prejudice or disclaimer and new claims 21-24 have been added. Claims 1-5, 7-9 and 15-24 are now pending in this application.

The applicants note that the Office Action Summary (Form PTOL-326) acknowledges a claim for foreign priority and boxes 12, a and 1 in section 12 of Form PTOL-326 have been checked, indicating that certified copies of the priority documents have been received. To clarify the record, the present application does not include a claim for priority under 35 U.S.C. § 119 and no foreign priority documents have been submitted in the present application.

The applicants also note that a Form PTO-90C has been provided with this Office Action along with eight pages of an Information Disclosure Citation (Form PTO-1449). As indicated on the PTO-90C, the Examiner has changed the Serial Number originally contained on each of the pages of this eight page PTO-1449 to reflect the Serial Number of the present application. The Examiner has also initialed these documents as being considered in the present application.

To clarify the record, the applicants did not provide these documents and these documents were apparently provided in a different application. Although, none of these documents have been cited in the current Office Action, the applicants note that these documents were not provided via the Patent Application Information Retrieval (PAIR) system. The applicants respectfully request

that copies of these documents be provided to the applicants (via the PAIR system or via hard copy form) with any subsequent communication.

Claims 2-4 have been rejected under 35 U.S.C. § 112, second paragraph. More particularly, the Office Action states that it is not clear how the two gates in claim 2 fit into the structural configuration recited in claim 1.

Claim 2 has hereby been amended to recite that the gate comprises a first gate electrode disposed on a first side of the fin and a second gate electrode disposed on a second side of the fin opposite the first side. Claim 2 is now believed to more clearly recite the structural relationships between the gate in claim 1 and the gate electrodes now recited in claim 2. Claims 3 and 4 have also been amended to recite that the gate comprises third and fourth gate electrodes, respectively. Accordingly, withdrawal of the rejection of claims 2-4 under 35 U.S.C. § 112, second paragraph is respectfully requested.

Claims 1, 5, 6 and 9 have been rejected under 35 U.S.C. § 102(a) as being anticipated by co-pending application number 10/348,758, entitled "Germanium MOSFET Devices and Methods for Making the Same", by Judy Xilin An et al. (hereinafter the '758 application). Claims 7 and 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application. The rejections are respectfully traversed.

Initially, the applicants note that in order to qualify as prior art under 35 U.S.C. §102(a), the prior art must be accessible to the public. That is, the statutory language "known or used by others" in 35 U.S.C. § 102(a) means knowledge or use which is accessible to the public (See MPEP §2132.01 at Section I). The '758 application was not published prior to the filing date of the

present application and was not accessible to the public prior to the filing date of the present application. Accordingly, the '758 application was not "known or used by others in this country" as defined in 35 U.S.C. § 102(a) prior to the filing date of the present application and does not qualify as prior art with respect to the present application under 35 U.S.C. § 102(a). Accordingly, withdrawal of the rejection of pending claims 1, 5, and 9 under 35 U.S.C. § 102(a) based on the '758 application is respectfully requested.

Claim 1, as amended, recites features previously recited in claim 7. The Office Action admits that the '758 application does not disclose forming two layers over the fin, but states that a composite gate insulation of an oxide and a nitride is notoriously utilized in the art (Office Action – page 3).

As discussed above, the '758 application does not qualify as prior art with respect to the present application under 35 U.S.C. § 102(a). The applicants further note that even assuming, for the sake of argument, that a provisional obviousness type rejection of pending claim 1 under 35 U.S.C. § 102(e)/103 was made, the '758 application does not qualify as prior art under 35 U.S.C. § 103 for the reasons discussed below.

The present application and the '758 application were both commonly assigned or subject to an obligation or assignment to Advanced Micro Devices, Inc. at the time the applicants' invention was made. The applicants note that the assignment for the '758 application has been recorded on Reel 013695, Frame 0591 and the assignment for the present application has been recorded on Reel 014369, Frame 0863. The '758 application therefore cannot preclude patentability under 35 U.S.C.

§ 103 in light of the American Inventors Protection Act of 1999 (hereinafter AIPA), effective for all applications filed on or after November 29, 1999.

Section 103(c) of 35 U.S.C. states: "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

The present application was filed on August 4, 2003, which is after the November 29, 1999 enactment date of this provision of the AIPA. Even if the '758 application issued, the filing date of August 4, 2003 is before any issue or publication date of the '758 application. Thus, the '758 application would only possibly qualify as prior art with respect to the present application under subsection (e) of 35 U.S.C. § 102. Since the present application and the '758 application were both commonly assigned or subject to an obligation of assignment to Advanced Micro Devices, Inc., the '758 application cannot be used to preclude patentability of the present invention under 35 U.S.C. § 103.

For at least these reasons, claim 1 is believed to be allowable over the '758 application.

Claims 5 and 7-9 are dependent on claim 1 and are believed to be allowable over the '758 application for at least the reasons claim 1 is allowable. Accordingly, withdrawal of the rejection of claims 5 and 7-9 based on the '758 application is respectfully requested.

Claims 1, 5, 6 and 9 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Yu et al. (U.S. Patent No. 6,764,884; hereinafter Yu). Claims 7 and 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Yu. The rejections are respectfully traversed.

Initially, the applicants note that Yu does not qualify as prior art under 35 U.S.C. §102(a). Yu was filed on April 3, 2003, but did not issue until July 20, 2004, after the filing date of the present application. Yu also was not published prior to the filing date of the present application. Therefore, Yu was not “known or used by others in this country” as defined in 35 U.S.C. § 102(a) prior to the filing date of the present application and does not qualify as prior art with respect to the present application under 35 U.S.C. § 102(a). Accordingly, withdrawal of the rejection of pending claims 1, 5 and 9 under 35 U.S.C. § 102(a) based on Yu is respectfully requested.

Claim 1, as amended, recites features previously recited in claim 7. The Office Action admits that Yu does not disclose forming two layers over the fin, but states that a composite gate insulation of an oxide and a nitride is notoriously utilized in the art (Office Action – page 5). As discussed above, Yu does not qualify as prior art with respect to the present application under 35 U.S.C. §102(a).

In addition, even if Yu qualifies as prior art with respect to the present application under 35 U.S.C. § 102(e), Yu cannot preclude patentability under 35 U.S.C. § 103 in light of the AIPA. The present application and Yu were both commonly assigned or subject to an obligation or assignment to Advanced Micro Devices, Inc. at the time the applicants' invention was made.

As discussed above, section 103(c) of 35 U.S.C. states: “Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of

section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

The present application was filed on August 4, 2003, which is prior to the July 20, 2004 issue date of Yu. Thus, Yu would only possibly qualify as prior art with respect to the present application under subsection (e) of 35 U.S.C. § 102. Since the present application and Yu were both commonly assigned or subject to an obligation of assignment to Advanced Micro Devices, Inc., Yu cannot be used to preclude patentability of the present invention under 35 U.S.C. § 103.

For at least these reasons, claim 1 is believed to be allowable over Yu.

Claims 5 and 7-9 are dependent on claim 1 and are believed to be allowable over Yu for at least the reasons claim 1 is allowable. Accordingly, withdrawal of the rejection of claims 5 and 7-9 based on Yu is respectfully requested.

NEW CLAIMS

New claims 21-24 have been added. These claims recite features not disclosed or suggested by the prior art. For example, claim 21 recites a semiconductor device comprising a substrate; an insulating layer formed on the substrate; a fin formed on the insulating layer, the fin having a plurality of side surfaces, a top surface and a bottom surface; a dielectric layer formed around the plurality of side surfaces and the bottom surface of the fin, the dielectric layer having a thickness ranging from about 20 Å to about 50 Å; and a gate formed on the insulating layer, the gate surrounding the plurality of side surfaces, the top surface and the bottom surface of the fin at a

channel region of the semiconductor device. The art of record does not disclose or suggest this combination of features. Accordingly, allowance of claim 21 is respectfully requested.

Claims 22-24 depend on claim 21 and are believed to be allowable for at least the reasons claim 21 is allowable. In addition, these claims recite additional features not disclosed or suggested by the art of record. For example, claim 22 recites that the semiconductor device further comprises an oxide layer formed over the top surface of the fin and a nitride layer formed over the oxide layer. The art of record does not disclose or suggest these features.

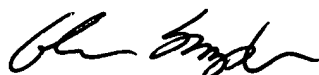
CONCLUSION

In view of the foregoing amendments and remarks, the applicants respectfully request withdrawal of the outstanding rejection and the timely allowance of this application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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